IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 48 OF 2005
WITH
APPEAL FROM ORDER NO. 49 OF 2005

1. Mr. Shaikh Abdul Qayam Abdulla
and anr. ..Appellants

Vs.

1. Mrs. Madina Banoo Hayatulla
and anr. ..Respondents

Mr. R.A. Thorat with Mr. V.A. Sugdare for appellants.
Mr. P.S. Dani for Respondent No.1.

CORAM: B.H. MARLAPALLE, J.

Date : June 13, 2005.

P.C.:

1. Heard Mr. Thorat with Mr. Sugdare, the learned counsel for the appellants who are the plaintiffs in S.C. Suit No.2071 of 2004. In the said suit the plaintiffs had taken out Notice of Motion No.1787/2004 for injunction and at the same time the defendants also took out another Notice of Motion No.3855/2005. The Notice of Motion No.1787/04 has been rejected whereas the Notice of Motion No.3855/04

has been partly allowed in terms of prayer clause (d) by appointing the Court Receiver to take over and manage the business again on rotation and for that purpose bid and appoint any of the persons to conduct the business as per the understanding between them for a period of 7 1/2 months, 6 months and 4 1/2 months subject to such conditions as may be relevant in the matter. This order was passed on 17/12/2004.

2. The trial court noted that the relief of injunction was sought by the plaintiffs contending that the partnership had come to an end and the firm ceased to exist on account of which the plaintiffs were in possession which required to be protected. The trial court on examination of the replies filed to the respective Notices of Motion came to the conclusion that the possession over the suit property i.e. Shop No.33 located on the ground floor of Mala Building, Jacob Circle, Satrasta, Mumbai 400 011 was joint between the plaintiffs and the defendants and, therefore, the relief prayed for by the plaintiffs in their Notice of Motion that the defendants should not

disturb their possession could not be granted. On the other hand, the partnership having come to an end, it was necessary to appoint a Court Receiver so that the activities of the suit property are continued which implied the business of eating house that was carried out in the suit shop continued further.

3. Respective parties had submitted charts regarding the duration of possession and the trial court noted that the parties were at loggerheads about the duration of possession of business. Under these circumstances, it would not possible for the trial court to accept the plaintiffs' contention that they were in exclusive possession of the suit shop and that they were running the business of eating house/restaurant. No fault could be found with the view taken by the trial court in that behalf and once it was held that the exclusive possession of the plaintiffs was not proved, it was necessary to appoint the Court Receiver so as to protect the suit property and continue with the business and to maintain the accounts of the business. It was under these

circumstances that the Notice of Motion filed by the defendants was partly allowed by exercising the powers under Order 39 Rule 1(a) of C.P.C.

4. Challenge to the impugned order is, therefore, devoid of merits and these appeals must fail at the threshold. The appeals are dismissed in limine.

(B.H. Marlapalle,J.)